



November 14, 2002

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: Ameritech Operating Companies, Tariff No. 2, Transmittal No. 1312;
Nevada Bell Telephone Companies, Tariff No. 1, Transmittal No. 20; Pacific Bell
Telephone Company, Tariff No. 1, Transmittal No. 77; Southern New England Telephone
Companies, Tariff No. 39, Transmittal No. 772; and Southwestern Bell Telephone
Company, Tariff FCC No. 73, Transmittal No. 2906; WC Docket No. 02-319**

Dear Ms. Dortch:

Attached is the Association for Local Telecommunications Services' ("ALTS")
Opposition to the Direct Case of SBC for filing in the above-captioned proceeding.

Sincerely,

/s/

Teresa K. Gaugler

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Ameritech Operating Companies)	
Tariff No. 2)	
Transmittal No. 1312)	
)	
Nevada Bell Telephone Companies)	
Tariff No. 1)	
Transmittal No. 20)	
)	
Pacific Bell Telephone Company)	
Tariff No. 1)	WC Docket No. 02-319
Transmittal No. 77)	
)	
Southern New England Telephone)	
Companies)	
Tariff No. 39)	
Transmittal No. 772)	
)	
Southwestern Bell Telephone Company)	
Tariff FCC No. 73)	
Transmittal No. 2906)	
)	

OPPOSITION TO DIRECT CASE

The Association for Local Telecommunications Services (“ALTS”) hereby files its Opposition to the Direct Case of SBC Communications Inc. (“SBC”), submitted in the above-referenced proceeding in response to the Commission’s Order,¹ regarding the suspension of proposed tariff amendments made by Ameritech Operating Companies, Nevada Bell Telephone

¹ *Ameritech Operating Companies, Nevada Bell Telephone Companies, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company, Tariff FCC Nos. 2, 1, 1, 39, and 73, Transmittal Nos. 1312, 20, 77, 772, and 2906, Order, WC Docket No. 02-319, DA 02-2577 (rel. Oct. 10, 2002) (“Designation Order”).*

Companies, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company (collectively referred to herein as "SBC") in Transmittal Nos. 1312, 20, 77, 772, and 2906, respectively.²

In the Designation Order, the Commission established areas for investigation and requested that SBC provide certain specific data related to those issues, as well as provide justification why its current tariff language and its price cap rates do not adequately protect from or compensate for the business risk of customer nonpayment. SBC repeatedly points out that bankruptcies have occurred and that its uncollectibles have increased during the past few years; however, those facts alone do not warrant such a drastic change in its deposit policy. Most importantly, SBC has not shown that the rise in its uncollectibles is a systematic long-term problem rather than due to natural fluctuations in the market or that its current tariff language and price cap rates are inadequate to protect from or compensate for any future risk of uncollectibles. ALTS opposes SBC's tariff revisions and urges the Commission not to grant SBC the opportunity to further drive competitive carriers from the market or to treat those carriers in an anticompetitive manner.

SBC's current tariff language differs among individual companies, but the companies generally may require a security deposit from customers with no established credit or with a proven history of late payments.³ Under its new tariff provisions, SBC proposes additionally to

² On August 16, 2002, the Commission suspended SBC's proposed tariff revisions for a five (5) month investigation period. *Ameritech Operating Companies, Nevada Bell Telephone Companies, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company, Tariff FCC Nos. 2, 1, 1, 39, and 73, Transmittal Nos. 1312, 20, 77, 772, and 2906*, Order, DA 02-2039, rel. Aug. 16, 2002 ("SBC Suspension Order").

³ See e.g., *Ameritech Operating Companies*, Tariff FCC Nos. 2, 1st Revised Page 40 (effective June 14, 1988); *Nevada Bell Telephone Companies*, Tariff FCC No. 1, Original Page 2-35 to 36 (effective Mar. 3, 2001); *Pacific* (continued....)

require a security deposit or advance payments from a customer if the customer suffers an impairment of its credit worthiness.⁴ SBC's revised tariff language would allow it to require a deposit or advanced payment from a customer if (1) that customer has failed to pay two monthly bills by the bill due date within a 12-month period; (2) any debt securities of the customer or its parent are below investment grade as defined by the Securities and Exchange Commission; (3) any debt securities of the customer or its parent are rated the lowest investment grade by a nationally recognized credit rating organization and are put on review by the rating organization for a possible downgrade; (4) the customer does not have outstanding securities rated by credit rating agencies and the customer is rated (a) "fair" or below in a composite credit appraisal published by Dun and Bradstreet, or (b) "high risk" in Paydex score as published by Dun and Bradstreet; (5) the customer or its parent informs SBC or publicly states that it is unable to pay its debts; or (6) the customer or its parent has commenced voluntary or involuntary receivership or bankruptcy.⁵ Additionally, SBC may only apply these criteria to customers that owe \$1 million or more in recent interstate access bills to SBC.

While SBC's newly proposed triggers may appear objective, they are nonetheless unnecessarily overbroad and likely to sweep in all competitive carriers, including many that are not at risk of nonpayment. SBC asserts that the first triggering criterion is a clarification of its previous policy requiring deposits from customers with poor payment history;⁶ however, this

(Continued from previous page) _____
Bell Telephone Company, Tariff FCC No. 1, Original Page 2-47 to 49 (effective May 12, 2000); *Southern New England Telephone Companies*, Tariff FCC No. 39, Original Page 2-13 (effective Nov. 28, 1988); and *Southwestern Bell Telephone Company*, Tariff FCC No. 7 Original Page 2-56 to 61 (effective July 1, 1992).

⁴ See e.g., *Ameritech Operating Companies*, Tariff FCC Nos. 2, Original Page 40.1 and Original Page 40.2.

⁵ See e.g., *Ameritech Operating Companies*, Tariff FCC Nos. 2, Original Page 40.2 and Original Page 40.3.

⁶ SBC Direct Case at 25.

criterion is overbroad because it includes no minimum threshold and could lead to deposits being required of many carriers that have not shown any significant pattern of nonpayment. SBC could potentially require a large deposit from a carrier that had only a minimal amount in arrears or that paid only one day late. Thus, while a customer may technically satisfy this criterion, it may not necessarily have demonstrated such poor payment history to warrant the imposition of a large security deposit or advanced payment requirement.

SBC should also not be permitted to use its monopoly power in the local telecom market to extract concessions in the bankruptcy arena. The bankruptcy courts have the authority and responsibility to provide “adequate protection” to creditors and must do so considering all circumstances. SBC should not be permitted to override the bankruptcy court through its tariff provisions. Moreover, neither the second, third, or fourth triggering criteria provides an adequate basis for SBC to require further assurance of payment. Many competitive carriers have experienced a downgrade in their investment grade rating, based on a variety of factors, some of which may be wholly unrelated to their ability to pay their creditors. Thus, SBC should not be permitted to use these triggers alone to require additional security deposits or advanced payment.

Furthermore, SBC’s policy of applying these criteria only to customers with billings at or above \$1 million conveniently allows SBC to avoid imposing such requirements on most of its end-user customers,⁷ thereby targeting its competitors for this unfair and discriminatory treatment. SBC’s data indicates it experienced approximately \$48 million in *total* interstate

⁷ *Id.* at 22-23 (“With respect to end user customers, SBC estimates that no more than 10 such customers satisfy the \$1 million threshold for interstate access services.”)

uncollectibles in 2001 and \$227 million through August 2002.⁸ It is unclear whether this includes interstate services other than access services, and while it is true that the level of uncollectibles increased in that time period, SBC has not provided evidence that this is anything more than a temporary fluctuation in the market, rather than a long-term trend. Even more compelling, though, is the comparison of those figures to the \$400 million that SBC has paid in penalties for violations of regulatory requirements during the approximate same time period. It is difficult to comprehend how \$48 million, or even \$227 million, in uncollectibles would compel such drastic changes in tariff provisions, whereas \$400 million in regulatory fines has spurred little change in the SBC's behavior. Clearly, the Commission must understand that neither amount is significant enough to necessitate modified business practices by the ILECs, either through reduced anti-competitive behavior toward CLECs or through these proposed tariff modifications. The ILECs cannot have their cake and eat it too – they cannot suggest that such small bad debt figures are enough to drive them into financial ruin on the one hand, while on the other hand continue to absorb much larger regulatory fines simply as a cost of doing business. The Commission should see this double-talking for what it really is – a plea for Commission approval allowing the ILECs to maintain their monopoly position in the market by driving competitive carriers out of the market in any way they can dream up. The Commission should take this opportunity to swiftly enforce its competitive policies with the appropriate level of fines, not sit back while the ILECs implement yet another scheme to undermine competition.

Many competitive carriers have raised concerns that they would likely be swept into

⁸ SBC Direct Case at 6 (Table 2).

SBC's dragnet and subjected to burdensome deposit requirements when in fact their companies are not at risk of default. As ALTS and others have highlighted in related proceedings, subjecting these carriers to further deposits when they are already financially stretched would have severe negative effects on local competition. This fact clearly provides ample incentive for SBC to impose burdensome security deposit and advance payment requirements on carriers when such measures are not necessary to protect SBC from the risk of nonpayment from those carriers. ALTS strongly agrees with the Commission that "an approach that has the fewest adverse effects on the competitive market while protecting SBC's interests would be preferred."⁹ In fact, ALTS believes such a result is *required* – the Commission should not subjugate the needs of competitors to those of the dominant provider.

SBC is already adequately protected from nonpayment risk by security deposit provisions currently in its tariff as well as through its price cap rates. SBC makes general statements about the financial stress and upheaval of the telecom industry, but such generalities do not support its request for additional protections against potential financial fallout from virtually every carrier in the industry. The current market volatility, by itself, does not warrant imposing such burdensome requirements on virtually all carrier customers under its tariff. Moreover, imposing such requirements will merely further increase financial uncertainty for many competitive carriers. Most competitive carriers are already financially stretched and are judiciously spending their working capital. To now require them to tie up more of that working capital in the hands of their biggest competitors is to doom competition and possibly lead to the demise of many of those carriers. Compelling them to pay additional funds to each of the

⁹ *Designation Order* ¶ 19.

ILECs to insulate the ILECs from potential financial risk only adds to the current financial uncertainty because competitive carriers would not have access to that working capital to run their businesses and generate revenues in order to timely pay the ILECs for services they purchase.

As the Commission suggested, its ratemaking policies for price cap carriers provide a mechanism to adequately compensate SBC for the risk of uncollectibles. SBC failed to provide any evidence that the variation in its uncollectibles for 2000 and 2001 is a long-term trend rather than a normal fluctuation accounted for by the business risks included in its price cap rates. While it is true that the telecom industry has suffered a downturn in recent years, it is also true that the economy as a whole has suffered a simultaneous downturn. There is no justification for SBC's presumption that it has experienced or will experience a greater financial risk than other industries or the economy as a whole.

Furthermore, SBC has not demonstrated that it is fully utilizing the means currently available under its tariff to impose security deposits on customers with poor payment history. SBC states that its existing tariff provisions "are inadequate because they fail to protect SBC in instances where a customer with a prompt payment history suddenly ceases to pay its bill two or three months prior to filing for bankruptcy."¹⁰ SBC admits that the majority of its uncollectibles are "owed by several of its largest customers," namely WorldCom and Global Crossing.¹¹ SBC cannot be allowed to attribute the behavior of these two companies to the rest of the competitive industry. SBC indicates that it is currently holding only \$1 million in

¹⁰ SBC Direct Case at 2.

¹¹ *Id.* at 2, 5.

security deposits, “representing much less than 1% of its average monthly interstate access billing.”¹² If this is compared to the total past due amounts for recent years (\$270 million at the end of 2000, \$252 million at the end of 2001, and \$285 million YTD for 2002),¹³ it is clear that SBC could (and should) have reevaluated some nonpaying carriers’ creditworthiness under its current tariff provisions and imposed additional deposit requirements based on their poor payment history. In this way, SBC could have ameliorated its loss due to bad debt. Instead, SBC has now chosen to employ a vague and overbroad process which could easily be arbitrarily and anti-competitively applied and which very likely would have adverse effects on the competitive telecom industry as a whole, rather than specifically on those carriers with a track record of poor payment. Moreover, SBC provides virtually no details regarding the past payment history of access customers that defaulted, claiming that it would have to perform manual processing to determine a customer’s historical payment patterns.¹⁴ Thus it has no basis for concluding that utilizing its newly proposed triggering criteria would result in a lower risk of uncollectibles from those customers.

Once SBC appropriately makes a request for further assurance of payment, sufficient notice must be provided to allow carrier customers time to review SBC’s request, resolve any related billing disputes, and make arrangements for a deposit, letter of credit, or advanced payment. Ten to fifteen days is simply not a reasonable amount of time for this to occur, and it is unfair for SBC to be allowed to unilaterally impose burdensome requirements on its

¹² *Id.* at 10.

¹³ *Id.* at 14-15.

¹⁴ *Id.* at 28.

competitors' resources. Allowing SBC to refuse service on such short notice would result in end-user customers losing their service within the same short notice period. Furthermore, imposing a 21-day deadline for payment of bills is unreasonable because it does not allow sufficient time for carriers to review bills, dispute charges it believes are incorrect, and then process payment for the remaining balance.

SBC proposes to refund a customer's security only when a customer requests a refund. Because SBC has the initial burden to show that a deposit is required under its credit analysis, the onus should likewise be on SBC to re-assess each customer at least annually *and* on request by a customer to determine if a deposit requirement is still necessary, according to its analysis.

Additionally, SBC should be required to refund a customer's security deposit once the customer has established credit or has promptly paid its bills for a one-year period.

Furthermore, if SBC denies a refund to a customer, that customer should have the right to contest that decision through a dispute resolution process. SBC's proposed tariff language does not currently include provisions for a dispute resolution process for the imposition of security deposits or advanced payments or for the refusal of a refund; however, the Commission should require SBC to include such a process to ensure that SBC is not the arbiter of its own decisions.

Carriers should not be required to undertake lengthy regulatory or litigation processes to obtain relief.

CONCLUSION

ALTS urges the Commission not to allow SBC the opportunity to unilaterally drive more competitive carriers out of the market with its unreasonable and anticompetitive demands. The Commission should reject SBC's tariff revisions because they are overly broad and unreasonable.

Respectfully Submitted,

**Association for Local
Telecommunications Services**

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